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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/248,812	02/11/99	WEILER	A Z 1126

GENE WARZECHA  
C/O LINVATEC CORPORATION  
11311 CONCEPT BOULEVARD  
LARGO FL 33773

QM32/0907

EXAMINER

MILANO, M

ART UNIT	PAPER NUMBER
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3738

DATE MAILED:

09/07/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**Application No.  
**09/248,812**Applicant(s)  
**Weiler**Examiner  
**Michael Milano**Group Art Unit  
**3738**☒ Responsive to communication(s) filed on Jun 27, 2000☒ This action is **FINAL**.☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

**Disposition of Claims**☒ Claim(s) 3 and 5-14 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 3 and 5 is/are allowed.☒ Claim(s) 6-14 is/are rejected.☐ Claim(s) \_\_\_\_\_ is/are objected to.☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.**Application Papers**☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.☐ The specification is objected to by the Examiner.☐ The oath or declaration is objected to by the Examiner.**Priority under 35 U.S.C. § 119**☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).**Attachment(s)**☐ Notice of References Cited, PTO-892☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_☐ Interview Summary, PTO-413☐ Notice of Draftsperson's Patent Drawing Review, PTO-948☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Claim Rejections - 35 USC § 112***

1. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 is not understood because it depend from canceled claim 1. Note line 1 applicant's June 27, 2000 amendment.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claims 7-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Thein, 5,356,435. Regarding claim 7, it should be noted that the primary implant and the bone tunnel are NOT part of the invention. The claim recites "a secondary surgical implant for use with a primary surgical

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implant in a bone tunnel." (emphasis added) Claim 7 meets all structural limitations of the secondary surgical implant. The description of the first implant and bone tunnel are not given patentable weight. If applicant wishes to claim the combination of the first implant and second implant than the claim should be amended to specifically recite the combination.

***Allowable Subject Matter***

4. Claims 3 and 5 are allowed.

***Response to Arguments***

5. Applicant's arguments have been fully considered but they are not persuasive.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the

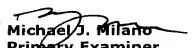
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mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication should be directed to Michael Milano at telephone number (703) 308-2496.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 3700 Receptionist whose telephone number is (703) 308-0858.

Milano.mm  
August 30, 2000

  
Michael J. Milano  
Primary Examiner  
Group 3700, AU 3738